



Advisory Opinion 08-026

This is an opinion of the Commissioner of Administration issued pursuant to Minnesota Statutes, section 13.072 (2007). It is based on the facts and information available to the Commissioner as described below

Facts and Procedural History:

On July 28, 2008, the Information Policy Analysis Division (IPAD) received an email, dated July 25, 2008, from Carol Morris. In her letter, Ms. Morris asked the Commissioner to issue an advisory opinion regarding her access to certain data from the City of Palisade.

IPAD, on behalf of the Commissioner, wrote to Gaylene Spolarich, City Clerk, in response to Ms. Morris' request. The purposes of this letter, dated August 6, 2008, were to inform her of Ms. Morris' request and to ask her to provide information or support for the City's position. On August 22, 2008, IPAD received a response, dated same, from Ms. Spolarich.

A summary of the facts as provided by Ms. Morris is as follows. She wrote in her opinion request:

On March 13, 2008 I requested in writing from the Palisade City Clerk documents showing what happened to the \$22,000 CD that was cashed in August, 2006 and documents showing what happened to the \$61,614.55 that was in the street fund on a report dated 11-07-2005...

With regard to the street fund, they are telling me the number in the street fund is wrong. Even if \$61,614.55 (the ending balance) isn't the correct number, based on several other account balance sheets I sent you dating from 12-31-02 through 10-31-04, I know it was \$64,390.75 as of October 31, 2004. These balance sheets were given out at council meetings. I am tired of arguing over the exact amount in the street fund, I just know there was a sum of money in there and I want to know where it went.

I submitted my request for these items...and clarified it again in my June 12, 2008 letter of request. Now I have only received a deposit slip showing the \$22,000 deposit...and the clerk's letter of explanation...I do not think they have responded appropriately and would like an advisory opinion. On document 'A,' which they sent me, it states that the money went into two places and the deposit slip shows the entire amount going into one place. Why aren't there two deposit slips? Document 'C,' from [the city auditor] to Gaylene Spolarich...specifically states the money was deposited into two separate accounts.

Issues:

Based on Ms. Morris' opinion request, the Commissioner agreed to address the following issues:

1. Did the City of Palisade comply with Minnesota Statutes, Chapter 13, in regard to a request for data documenting what happened to the \$22,000 CD that was cashed in August 2006?
2. Did the City of Palisade comply with Minnesota Statutes, Chapter 13, in regard to a request for data documenting what happened to the money showed on November 7, 2005, to be in the street fund?

Discussion:

***Issue 1:** Did the City of Palisade comply with Minnesota Statutes, Chapter 13, in regard to a request for data documenting what happened to the \$22,000 CD that was cashed in August 2006?*

Pursuant to Minnesota Statutes, Chapter 13, government data are public unless otherwise classified. (Minnesota Statutes, section 13.03, subdivision 1.)

In responding to a data request, a government entity must provide the data, advise that the data are classified such that the requestor is denied access, or inform the requestor that the data do not exist.

In addition, Minnesota Statutes, section 15.17, requires government entities to create records that document their official activities. Pursuant to Minnesota Statutes 138.17, official records must be kept for time periods as prescribed in the entity's record retention schedule.

In her July 14, 2008, letter to Ms. Morris, Ms. Spolarich wrote:

The investments that are made can be assigned to any account, when the \$22,000 CD was cashed in, it was assigned to the sewer account but in fact was partial general fund as well as partial sewer account. The sewer account costs the City \$27,600 annually for the operator and debt that was incurred, that does not include maintenance when a pump is an issue. If I had to track the flow of money, the \$22,000 wouldn't come close to the debt that has been incurred.

The reason for an annual audit is to assure that government funds are spent properly, if there was a problem with how monies were spent, the annual audits would show the discrepancies because all payments are generated by invoices.

In her comments to the Commissioner, Ms. Spolarich wrote:

The comment that the money should go into separate accounts, the city has one checking account which all fire funds, water/sewer payments, community center rental, grant monies,

state & county funding are deposited into, therefore, when the audit is conducted on an annual basis, the monies are then separated into the accounts they belong to.

Ms. Morris asked for data documenting what happened to the \$22,000 CD that was deposited into the City's account. The City responded by providing a copy of the canceled check that shows the money was deposited. In her July 14, 2008, letter to Ms. Morris, Ms. Spolarich wrote that the CD "was assigned to the sewer account but in fact was partial general fund as well as partial sewer account." In her comments to the Commissioner, Ms. Spolarich stated that the City has one checking account and "when the audit is conducted on an annual basis, the monies are then separated into the accounts they belong to."

As discussed above, section 15.17, requires that government entities create and maintain official records. Section 15.17, subdivision 4, states that access to records containing government data is governed by sections 13.03 and 138.17. Thus, section 15.17, read in concert with section 13.03, imposes an obligation upon government entities to make and preserve a record of their actions so that the data in those records will be accessible pursuant to Chapter 13.

Here, Ms. Spolarich seems to be saying that the \$22,000, while placed only in one bank account, was allocated to specific City programs. The designation of these monies to specific programs and how the money subsequently was spent would be an official activity that should be documented and then maintained as long as required by the City's retention schedule. Therefore, providing Ms. Morris with only a copy of the canceled check is not an appropriate response under Chapter 13 and section 15.17.

Issue 2: *Did the City of Palisade comply with Minnesota Statutes, Chapter 13, in regard to a request for data documenting what happened to the money showed on November 7, 2005, to be in the street fund?*

In her July 14, 2008, letter to Ms. Morris, Ms. Spolarich wrote:

...The CTAS balance you continue to refer to, should have gone into the Fire Department account, they generate \$40,000+ from fire contracts, as you can see on the CTAS report, the Fire Department has no beginning balance. It is impossible for the street account to have that much in it when we are assessed approximately \$6,000 annually and over half of that is paid out for snow maintenance and does not include other expenses such as lighting and repairs done to the street equipment.

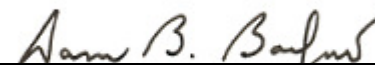
Ms. Morris asked for data that document what happened to money listed in a November 7, 2005, document to have been in the street fund. Ms. Morris provided the Commissioner with a copy of the November 7 document and the ending balance is shown as \$61,614.55. As discussed above, pursuant to Chapter 13, the City needed to give Ms. Morris the data or inform her that the data do not exist. The City has not done this. Further, as the data at issue here are similar to the data discussed in Issue 1, if the City does not have the data, it is not in compliance with the requirements of section 15.17.

Opinion:

Based on the facts and information provided, my opinion on the issues that Ms. Morris raised is as follows:

1. The City of Palisade did not comply with Minnesota Statutes, Chapter 13, and Minnesota Statutes, section 15.17, in regard to a request for data documenting what happened to the \$22,000 CD that was cashed in August 2006.
2. The City of Palisade did not comply with Minnesota Statutes, Chapter 13, in regard to a request for data documenting what happened to the money showed on November 7, 2005, to be in the street fund. Additionally, if the City does not have any data, it is not in compliance with section 15.17.

Signed:



Dana B. Badgerow
Commissioner

Dated:

September 8, 2008